



Death Penalty Representation Project
Special Committee of the American Bar Association

Implementation of the 2003 ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases

In 2001 the ABA Death Penalty Representation Project sponsored a project to revise the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. The original ABA Guidelines, approved in 1989, were heavily relied upon as nationally recognized standards on the defense of capital cases. The revised edition expanded the original standards to reflect recent legal developments and provided additional explanation and guidance to assist judges and capital defenders. The revised edition overwhelmingly passed in the ABA House of Delegates without dissent on February 10, 2003.

The 2003 *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*¹ are now recognized as the standard of care in the defense of death penalty cases. The ABA Guidelines are regularly cited by state and federal courts, including the U.S. Supreme Court, to assess counsel performance and ensure adequate funding and resources for the defense team effort.²

- In 2005, the U.S. Supreme Court reversed and remanded the case of *Rompilla v. Beard*, 545 U.S. 374, for a new sentencing hearing after finding that Rompilla's defense counsel was ineffective. The Court cited to § 10.7 of the ABA Guidelines noting: "Counsel must ... investigate prior convictions ... that could be used as aggravating circumstances or otherwise come into evidence. If a prior conviction is legally flawed, counsel should seek to have it set aside. Counsel may also find extenuating circumstances that can be offered to lessen the weight of a conviction."³

¹ The 2003 ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases can be found on the ABA Death Penalty Representation Project's website at <http://www.abanet.org/deathpenalty/resources/home.shtml> and at 31 Hofstra L.R. 913 (2003).

² Visit <http://www.abanet.org/deathpenalty/resources/home.shtml> for a continually updated list of cases that cite to the ABA Guidelines.

³ *Rompilla v. Beard*, 545 U.S. at 387 citing ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases § 10.7, comment. (rev. ed. 2003).



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- In 2003, the U.S. Supreme Court granted a new sentencing hearing in the case of *Wiggins v. Smith*, 539 U.S. 510 after finding that defense counsel's conduct "fell short of the standards for capital defense work articulated by the American Bar Association (ABA) – standards to which we have long referred as "guides to determining what is reasonable" and that counsel's performance fell below the Guidelines' "well-defined norms."⁴

The ABA has called on all death penalty jurisdictions to implement the Guidelines.⁵ To this end, the Project speaks to state and national judicial groups, works with state legislators, and trains capital defenders about the importance of the Guidelines and how courts across the country are using them.

- In early 2008, the Nevada Supreme Court issued new standards for the defense of capital cases⁶ that substantially conform to the 2003 ABA Guidelines.
- In 2007, Oregon's Office of Public Defense Services adopted the 2003 ABA Guidelines.⁷
- In 2006, the Arizona Supreme Court amended the Arizona Rules of Criminal Procedure to require that death penalty counsel "be guided by and familiar with" the performance standards of the ABA Guidelines.⁸
- In 2006, the Texas State Bar adopted a Texas version of the Guidelines which is almost identical to the ABA version.⁹

⁴ *Wiggins v. Smith*, 539 U.S. 510 at 524.

⁵ ABA Resolution of February 3, 1997 at <http://www.abanet.org/moratorium/resolution.html>.

⁶ Order, ADKT No. 411, Supreme Court of Nevada, In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases.

⁷ <http://www.ojd.state.or.us/osca/opds/Reports/documents/pdscdeathpenaltyreportandplan.pdf>

⁸ See Arizona Criminal Procedure Rule 6.8 at <http://www.supreme.state.az.us/rules/rarulcrim.htm>.

⁹ The Guidelines and Standards for Texas Capital Counsel can be found on the Texas State Bar website or by contacting the ABA Death Penalty Representation Project.



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- In 2005, the Georgia Public Defender Standards Council adopted the ABA Guidelines (except where the Guidelines conflicted with Georgia law).¹⁰
- In 2005, The Alabama Circuit Court Judges Conference adopted the ABA Guidelines by Resolution.¹¹
- In 2003, the National Association of Criminal Defense Lawyers (NACDL) adopted the ABA Guidelines, noting that they are “necessary standards to ensure minimally adequate representation in capital cases.”¹²
- In 2003, the Department for Public Advocacy for the Commonwealth of Kentucky adopted the performance standards of the ABA Guidelines.¹³

Please contact the ABA Death Penalty Representation Project for more information. We can be reached at 202-662-1738 or via e-mail deathpenaltyproject@staff.abanet.org. For more information about our work, please visit our website at <http://www.abanet.org/deathpenalty>.

¹⁰ <http://www.gpdsc.com/cpdsystem-standards-main.htm>.

¹¹ A copy of the resolution is available by contacting the ABA Death Penalty Representation Project.

¹² <http://www.criminaljustice.org/public.nsf/0/b83fca3dcdbd3063e85256da9005dd21b?OpenDocument>.

¹³ Attorneys assigned by the Department to a capital case are contractually obligated to meet the performance standards. A copy of the contract can be obtained by contacting the Department for Public Advocacy for the Commonwealth of Kentucky or the ABA Death Penalty Representation Project.